SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 558

MRS. ELLA JAMISON,

Appellant,

vs.

THE STATE OF TEXAS.

APPEAL FROM THE CRIMINAL COURT OF DALLAS COUNTY, TEXAS.

STATEMENT AS TO JURISDICTION.

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No. 558

STATE OF TEXAS,

vs.

Appellee,

MRS. ELLA JAMISON,

Appellant.

JURISDICTIONAL STATEMENT.

In compliance with Rule 12 (1) of the Supreme Court of the United States, as Amended April 6, 1942, appellant files her statement disclosing the basis upon which she contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction.

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code, or 28 U. S. C. 344 (a).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a

matter of right on writ of error. This case offers a situation covered in said statutes.

Texas Legislation Drawn in Question.

The legislation, the constitutionality and validity of which as construed and applied to appellant, here drawn in question is an ordinance of the City of Dallas, Texas, known as Article 1407 of Ordinance No. 3251 reading as follows:

> "It shall be unlawful for any person to carry or hold by hand or otherwise, any billboard, show card, placard or advertisement or sign of any description for the purpose of advertising, or to wear any costume for the purpose of attracting attention of the public, or to scatter or throw any handbills, circulars, cards, newspapers or any advertising device of any description, along or upon any street or sidewalk in the city of Dallas. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction, may be fined in any sum not exceeding one hundred dollars."

The foregoing ordinance appears in the agreed statement of facts recorded by the stenographer at pages 10 and 11 (R. 24-25).

The County Criminal Court of Dallas County, Texas, the highest court of Texas in which a decision can be obtained in this cause, held that the ordinance was valid and constitutional and that it did not abridge appellant's rights of assembly, the use of the public sidewalks and streets, freedom of speech, freedom of press, and freedom to worship Almighty God according to the dictates of her conscience and as commanded in God's law the Bible contrary to the First and Fourteenth Amendments to the United States Constitution. Said court also held that said ordinance was not unreasonable, arbitrary and in excess of the police powers so as to violate the due process and equal protection clauses

of the Fourteenth Amendment to the *federal constitution*. Accordingly, that court of last resort of the State of Texas sustained the application of the ordinance to appellant and decided in favor of the validity of the same under the *federal constitution* and held it to be constitutional on its face and as construed and applied.

County Criminal Court—Court of Last Resort.

Article 53 of the Code of Criminal Procedure for Texas, 1925, provides that the Court of Criminal Appeals of Texas does not have jurisdiction of an appeal from a judgment rendered by the County Court on trial *de novo* on appeal from a Corporation or Justice Court where the fine assessed does not exceed the sum of $100.00. Other articles of the Code of Criminal Procedure confer exclusive appellate jurisdiction involving misdemeanor offenses where the fine does not exceed $100.00 and where the case originated in the justice or corporation court. *Ex parte Largent*, 162 S. W. (2nd) 419. The County Criminal Court is the court of last resort and the highest court in the State of Texas in which a decision could be had in this cause, although said County Criminal Court is not the highest criminal court of appeals in the state. This court has so held in other cases. *Thomas* v. *Rabb*, 287 U. S. 564; *Bacon* v. *Texas*, 163 U. S. 207; *Sullivan* v. *Texas*, 207 U. S. 416, 422; *S. A. & A. P. R. Co.* v. *Wagner*, 241 U. S. 476, 477. See also *Pennsylvania Railroad Co.* v. *Illinois Brick Co.*, 297 U. S. 447, 453.

Timeliness.

The judgment of the County Criminal Court assessing a fine of $5.00 and costs was rendered and entered on the 4th day of November, A. D. 1942. (R. 4-5). The judgment of the Dallas County Criminal Court is now a final judgment. This petition for appeal is duly presented and filed within

three months from the date of such final judgment and is therefore timely as required by law.

Statement of Nature of Case and Rulings of Court.

The rulings of the County Criminal Court of Dallas County, Texas, are such as to bring this case within the jurisdictional provisions relied on above.

Appellant, Mrs. Ella Jamison, is an ordained minister of Jehovah God in a covenant with Him to preach the gospel of God's kingdom, The Theocracy, by following in the footsteps of Christ Jesus, the faithful and true witness. That she is associated with the Oak Cliff Dallas Company of Jehovah's witnesses in the performance of her ministerial activities (S. F. 3, R. 17-26).

While discharging her duties as an ordained minister by means of peacefully, orderly, and quietly distributing handbills and leaflets advertising a public sermon or discourse on the Bible prophecies concerning a topic of present day interest, to wit, PEACE. CAN IT LAST? to be delivered by N. H. Knorr, president of the Watchtower Society on September 20, 1942, she was arrested and charged with a violation of the aforesaid ordinance by means of handing such printed invitations to pedestrians whom she met while walking down the sidewalk along South Montclair Street in the City of Dallas, Texas (S. F. 2, R. 16-26).

Prior to September 20, 1942 the Dallas Company of Jehovah's witnesses arranged to join a nation-wide assembly of Jehovah's witnesses to be held in more than 52 cities of the United States. Vickery Park was to be tied in with the "key city" Cleveland, Ohio, by telephone wire communication to carry the discourse advertised. The holding of this public meeting in Dallas was one of the means employed by appellant and other of Jehovah's witnesses in preaching the gospel. The public in Dallas were invited to attend

and listen. There were no charges for admission and no collection of any kind was solicited from those attending; but it was free of charge. The speech "PEACE. CAN IT LAST?" was also printed in booklet form and distributed free of charge to all who attended the assembly. This sermon related to a discussion of post-war conditions from the view point of Bible prophecy on the subject. It shows that there are certain dangers in the coming peace conference which must be avoided in order to win the peace. If these dangers are not discovered by the people they cannot be avoided the discourse points out. The discourse pointed out definitely the dangers to be avoided in order to win the peace. Also there was pointed out the explanation of Revelation 17:8 concerning the "beast that was, and is not, and yet is" and also clearly showed who will establish the enduring peace. The printed report of the speech "PEACE. CAN IT LAST?" was introduced in evidence and made a part of the record and identified as Exhibit 4 (S. F. 4; R. 6-17). An examination of the contents of the exhibit shows that it was not on a commercial or selfish subject and that the convention assembly that the public was invited to attend by appellant was not for a commercial or profit purpose.

The leaflet inviting the public to attend which was distributed by the appellant reads as follows:

> "Will Postwar Conditions bring a New World? It is vital to know now. Hear Peace, Can it Last? By N. H. Knorr, addressing the Nation-wide Assembly of Jehovah's witnesses simultaneously in more than 50 cities. Key Assembly, Cleveland, Ohio. Sunday, September 20, 3:00 p. m., Vickery Park, Highway 75, Greenville Avenue, Dallas, Texas. *Admission free. No collection.* This is your invitation to attend the Nation-wide Assembly of Jehovah's witnesses, particularly the public address, Peace, Can It Last? By N. H. Knorr, President of the Watchtower Society as announced

overleaf. Also you will receive the uplifting hope of life in eternal youth in a new world, by reading Children, 384 pages, illustrated with unusual colored pictures, and bound in sky-blue cloth, stamped with gold and embossed; and Hope 64 pages, showing the hope for the dead and for the survivors in a righteous world. Both Watchtower publications mailed to you postage prepaid on your contribution of 25¢. Send to Watchtower, 117 Adams St., Brooklyn, N. Y."

This is identified as exhibit number 1 (S. F. 2-3).

The undisputed evidence shows that the book and booklet described on the leaflet was not distributed by appellant because no one inquired; but that if one inquired of appellant she would have offered to deliver them to their home for the contribution of 25¢ which was less than the actual cost price of publication and distribution. (S. F. 6-9; R. 16-26.) The book and booklet relate to an explanation of God's kingdom and not to any commercial pursuit or purpose. The book and booklet are exhibits number 3. (S. F. p. 8; R. 16-26.)

Appellant distributed the above described leaflet on the sidewalk in a quiet and orderly manner without being offensive to anyone. She did not scatter or throw any of the leaflets upon the sidewalks as she proceeded along the street; but she handed them only to pedestrians whom she met who were willing to receive them. (S. F. 4; R. 16-26) The appellant thus acted as a minister believing this to be her duty to preach and that if she failed to thus preach the Gospel in this manner that she would be everlastingly destroyed as recorded in Ezekiel 3:18; and Ezekiel 33:8-9. When first approached by the police officer he requested her to discontinue; but she refused and stated that she stood in the same position with regard to the request as did the Apostles of Jesus when requested to discontinue preaching who said: "We ought to obey God

rather than men" (Acts 5 29) "Whether it be right in the sight of God to hearken unto you more than unto God, judge ye" (Acts 4:19). When she thus refused to discontinue the police officer arrested her. (S. F. 12).

Corporation Court Proceedings.

Appellant was charged by complaint filed in the Corporation Court of Dallas, Texas, with an alleged violation of the ordinance (R. 2-3). Among other things the complaint alleges: "carry, hold by hand, distribute, scatter and throw handbills as an advertising medium, in violation of and contrary to Art. 140-7 of Ord. 3251 of the Ordinances of the City of Dallas, Texas, upon the sidewalks of South Montclair Street" (R. 2-3). Upon trial in the Corporation Court appellant urged a motion to quash on the ground that the ordinance was unconstitutional (R. 3-4). The appellant was found guilty as charged in the Corporation Court and duly appealed by filing a bond (R. 4-5).

County Criminal Court Proceedings.

The trial in the County Criminal Court was *de novo* and evidence was in the form of an agreed statement of facts (S. F. 1-12; R. 16-26). In the time and manner required by law appellant duly filed her motion to quash the complaint in which appellant attacked the ordinance because it was in excess of the police power of the state and that the means employed were unreasonable; because it abridged the people's inherent rights of freedom of assembly, the use of the streets and sidewalks, freedom of speech and of the press and freedom of communication; and, because as construed and applied it abridged the same rights (R. 8-9). The timely motion was overruled (R. 10-11).

At the close of all the evidence appellant duly filed and urged her motion for a judgment of acquittal and for an

order discharging appellant because: (1) The ordinance was unreasonable and in excess of the police powers of the state and denied liberty and property in violation of the Fourteenth Amendment to the United States Constitution; (2) The ordinance was void on its face because it abridges the rights of freedoms of assembly, speech, press and of the use of the public sidewalks contrary to the First and Fourteenth Amendments to the United States Constitution; and (3) The ordinance was void as construed and applied to the circumstances of appellant's activity because it abridges her rights of freedoms of assembly, speech, press, the lawful use of the public sidewalks and her right of freedom to worship Almighty God according to the dictates of her conscience contrary to the First and Fourteenth Amendments to the United States Constitution (R. 11-12). The motion was overruled and appellant excepted (R. 13). A final judgment convicting the appellant was rendered and entered and thereby appellant was fined $5.00 and costs (R. 14). A motion for new trial was timely filed and amended by leave of court in which motion the ordinance was attacked on the same grounds as above described (R. —). The motion for new trial was overruled and appellant excepted (R. —).

The County Criminal Court, as well as the Corporation Court, duly passed upon each of said federal questions or assignments attacking the validity of the ordinance and said court held it valid and constitutional, both on its face and as applied and held that the First and Fourteenth Amendments had not been violated in applying the ordinance to the appellant's activities.

In the petition for appeal and the assignments of error filed with this jurisdictional statement, appellant complains of the judgment of the County Criminal Court of Dallas County, Texas, for and on account of each of the grounds

set forth in her brief, motions to quash and for judgment of acquittal filed in said court.

Grounds and Decisions Sustaining Appellate Jurisdiction of the United States Supreme Court and Showing Federal Questions Involved on Appeal.

FIRST.

The ordinance in question, both on its face and as construed and applied to appellant, is violative of the federal constitution in that it abridges appellant's freedoms of assembly, the use of the public streets and sidewalks, of speech, of press and of worship of Almighty God according to the dictates of her conscience and as commanded by Jehovah God, all contrary to the First and Fourteenth Amendments to the United States Constitution.

SECOND.

The ordinance in question is void upon its face and as construed because by its terms it is in excess of the police power of the State of Texas and the City of Dallas and is unreasonable and arbitrary in the means employed which have no reasonable relation to the ends aimed for nor the police powers of the state and by reason thereof it violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

Discussion.

The case was fully argued before the court below and many cases directly in point showing this type of ordinance to be unconstitutional and void were called to the attention of that court, including several decisions by this court which were quoted from at length. Without stating any reasons the County Criminal Court held the ordinance

valid thus completely ignoring applicable decisions by this court.

The highest Criminal Court of Texas has closed its doors to Jehovah's witnesses on the questions presented in cases of this character while at the same time granting relief by way of writ of habeas corpus to some persons to suit its own uncertain discretion. *Ex parte Largent*, 102 S. W. (2d) 419; *Ex parte Roquemore*, 131 S. W. 1101; *Ex parte Lewis*, 147 S. W. (2d) 478; *Ex parte Baker*, 78 S. W. (2d) 610; *Ex parte Faulkner*, 158 S. W. (2d) 525. The uncertainty of getting the Court of Criminal Appeals to take jurisdiction by way of writ of habeas corpus action leaves this court as the only court to appeal to for the purpose of protecting their constitutional rights.

The ordinance is clearly unconstitutional and void because of the fact that it is absolutely prohibitory and does not purport to be regulatory. "Ordinances absolutely prohibiting the exercise of the right to disseminate information are, a fortiori, invalid." (Mr. Justice Reed in *Jones* v. *City of Opelika*, 62 S. Ct. 1231.) Ordinances of Los Angeles, Milwaukee and Worcester containing prohibitory provisions substantially identical with the terms of this ordinance were declared invalid and unconstitutional in the case of *Schneider* v. *State*, 308 U. S. 147. The ordinance here questioned is identical with that declared unconstitutional by this court in the case of *Hague* v. *C. I. O.*, 307 U. S. 496, 501, 518. There the ordinance forbids any person to "distribute or cause to be distributed or strewn about any street or public place any newspapers, paper, periodical, book, magazine, circular, card, or pamphlet" (p. 501). The holding of the County Criminal Court conflicts with this court's holding in the case of *Thornhill* v. *Alabama*, 310 U. S. 88, and in the case of *Carlson* v. *California*, 310 U. S. 102, where prohibitory legislation was declared invalid.

In *Jay Burns Baking Co.* v. *Bryan*, 264 U. S. 504, this court said: "A state may not, under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them." See also 3 *McQuillen on Municipal Corporations* 2nd 3d., p. 122. In *Ex parte Walrod*, 120 Pac. 2nd 783, the Criminal Court of Appeals of Oklahoma declared invalid an ordinance very similar to this one question on this appeal. See also *Ex parte Winnett et al.*, 121 Pac. 2nd 312.

The ordinance here is void under the doctrine of *Lovell* v. *Griffin*, 303 U. S. 444. This court's words in that case are appropriate here, to wit: "The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little avail'."

This sort of ordinance is appropriately described by United States District Judge Underwood in *Zimmerman* v. *London*, 38 Fed. Supp. 582, where it is said: "In the case now before this Court, the ordinance imposes no censorship upon the 'free and unhampered distribution of pamphlets'; it imposes what amounts to a virtual prohibition upon such distribution. • • •"

This is not a case of commercial advertising nor an effort to hide commercial advertisement behind matter of public interest on the same sheet or handbill. Therefore the doctrine of *Valentine* v. *Chrestensen*, 62 S. Ct. 920. Here the parties have stipulated that the meeting was not commercial but solely for a charitable and Christian purpose and that the speech advertised could be heard free of charge. The undisputed evidence shows that the book mentioned incidentally with the advertisement of the meeting did not relate to a commercial matter and that the appellant did not

make any profit from a distribution of the book; but on the contrary when one is placed at the fixed contribution of twenty-five cents that appellant suffers a loss of money. Mentioning of the book on the leaflet was only incidental to the primary aim of the invitation, to wit, get the people of good will in Dallas to attend the assembly and hear the important talk "Peace. Can It Last?".

It is not contended that the appellant is a peddler or that she sold any thing. Every leaflet distributed by her was distributed free of charge. The undisputed evidence shows that she distributed the invitations peacefully, properly and did not offend or annoy anyone. She did not scatter or throw the invitations upon the streets or sidewalks but she only handed them to such persons who were willing to receive them upon the public streets.

The ordinance is not directed at any abuse of the privilege. The ordinance is void on its face. It prohibits a person from carrying or holding any advertisement matter. Being unconstitutional in part on its face it is void in its entirety. There is no rational connection between the means employed and the end aimed at by the ordinance. The police power relied upon by appellee has its limitations recognized by the court, when confronted with the barrier of constitutional protection of the rights of freedom of worship and of press. See Freund's "*The Police Power*" p. 133, s. 143. In *Schneider* v. *State*, supra, this court said: "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." In the case of *Herndon* v. *Lowry*, 301 U. S. 242, this court said:

> "The power of the state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterances of a defined char-

acter must find its justification in a reasonable apprehension of danger to organized government. The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principles of the Constitution."

This court also pointed out in the case of *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152-153, that a "narrower scope for the presumption of constitutionality" prevails when legislation within specific prohibitions of the first ten amendments to the Constitution is before the court.

The ordinance does not expressly include within its terms "ministers of the gospel" but since it has been construed so as to apply to appellant's activity as an ordained minister of the gospel the right to preach and invite others to hear a "sermon" on the public streets by means of distribution of leaflets the provisions of the constitution guaranteeing freedom to worship Almighty God have likewise been abridged and violated.

It is very clear that the County Criminal Court stumbled into the "pit of error" at the hearing of this cause by not "performing the delicate and difficult task of appraising the substantiality of the reasons advanced" in support of the challenged legislation. That court did not give proper weight to the reasons advanced by appellant in support of the questions presented to it and blindly refused to follow applicable decisions of this court.

For the above reasons we submit that the County Criminal Court has committed fundamental error and ruled directly contrary to controlling decisions of this court, and has so far departed from the usual and customary course and path of constitutional law as to require the Supreme Court of the United States to exercise its power to correct the same in these proceedings.

Conclusion.

For sake of brevity, reference is here made to Petition for Appeal filed in this cause, with which we incorporate, by such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that susbtantial questions were presented to the County Criminal Court.

WHEREFORE the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of this Court, because the courts below disposed of important federal questions in a way that is in conflict with applicable decisions of this Court and have so radically and far departed from the Constitution of the United States and the accepted and regular course of the judicial procedure of American courts as to call for this Court's power of supervision to halt the same.

Confidently and respectfully submitted,

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